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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,841	08/16/2001	Paul Nadj	SIA-P033	4552

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MARTINE PENILLA & GENCARELLA, LLP  
710 LAKEWAY DRIVE  
SUITE 200  
SUNNYVALE, CA 94085

EXAMINER

FILIPCZYK, MARCIN R

ART UNIT PAPER NUMBER

2163

DATE MAILED: 05/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/931,841

Applicant(s)

NADJ ET AL.

Examiner

Marc R. Filipczyk

Art Unit

2163

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 5-10 and 22-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5-10 and 22-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This action is responsive to Applicant's RCE request and amendment filed on March 7, 2006.

**To expedite the process of examination Examiner requests that all future correspondences in regard to overcoming prior art rejections or other issues (e.g. amendments, 35 U.S.C. 112, objections and the like) set forth by the Examiner that Applicants provide and link to the most specific page and line numbers of the disclosure where the best support is found (see 35 U.S.C. 132).**

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/7/06 has been entered. Claims 5-10 and 22-27 are pending.

#### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 5-10 and 22-27 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth whether the invention accomplishes a practical application and whether it generates a useful, concrete and tangible result.

The guidelines explain that a practical application of a 35 U.S.C. 101 judicial exception is claimed if the claimed invention physically transforms an article or physical object to a different state or thing, or if the claimed invention otherwise produces a useful, concrete, and tangible result.

In the present case, independent claims 5 and 22 do not involve transformation of article or physical object to a different state or thing, they merely recite associating queues with a data structure. Further, independent claims 5 and 22 do not produce a useful, concrete, and tangible result, but merely select an event whose structure such as its priority and order is not changed from the original identified queue, instead the event only corresponds to a node which comprises the same structure and priority as the associated queue. State Street, 149 F.3d at 1373-74, 47 USPQ2d at 1601-02.

Claims 5 and 22 taken as a whole are directed to a mere method and program listing, i.e., to only its description or expression, is descriptive material per se, do not comprise a practical application as explained above hence are nonstatutory.

Since the claimed invention, as a whole, does not comprise a practical application as explained above, claims 6-10 and 23-27 which depend from claims 5 and 22 respectively, are deemed to be directed to non-statutory subject matter.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 5-10 and 22-27 are rejected under 35 U.S.C. 102(e) as being anticipated by

Cochran et al (U.S. Patent No. 6,701,324).

Regarding claims 5 and 22, Cochran discloses a method/program for scheduling events in a computer processing system: (abstract)

identifying queues, each queue associated with a corresponding priority; (fig. 4, items 402, 404 and 406)

defining a data structure with a root level having a group node, the group node having nodes stored contiguously in memory and pointer; (fig. 1 A, item 110, 108n, 106 and 104, col. 5, lines 18-22 and col. 8, lines 41-46)

associate queues with respective nodes of the data structure; (col. 5, lines 22-28)

assign a value representing the corresponding priority to the respective nodes; (col. 5, line 22, *scheduling*)

determine priority between nodes based on respective values representing the corresponding priority to the respective nodes; (fig. 3, 108n, 110, 302 and col. 7, lines 10-19 and lines 53-59)

select one of the events corresponding to a node having a highest priority for transmission to a processing resource (fig. 4, items 424 and 426 and col. 8, lines 56-65).

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Regarding claims 6-10 and 23-27, all of the features have been noted in the rejection above, in addition see rescheduling (fig. 4, item 424 and related text), routing manager (fig. 1A, item 110 and related text) and RDBMS (fig. 1A, item 114 and related text).

### ***Response to Arguments***

Applicant's arguments filed on March 7, 2006 have been fully considered but they are not persuasive. The arguments and responses are listed above.

Applicant argues on page 8 of the 3/7/06 response that Applicant's invention falls within the technological arts.

Examiner disagrees. The claimed invention must have practical application under a 35 U.S.C. 101 requirement. For more information see rejections above.

Applicant argues on page 9 of the 3/7/06 response that the feature of nodes being stored contiguously in memory is not shown by Cochran.

Examiner disagrees. Cochran system clearly discloses a node tree like data structure for maintaining and scheduling queue events (fig. 1A). Examiner contends that in order to store and manage the nodes in Cochran system the structure must be contiguously stored or managed and stored in organized matter in memory in order to have control and make use of the tree like node structure. For more information refer to the rejection above.

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With respect to all the pending claims 5-10 and 22-27, Examiner respectfully traverses Applicant's assertion based on the discussion and rejections cited above.


***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc R. Filipczyk whose telephone number is (571) 272-4019. The examiner can normally be reached on Mon-Fri, 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don Wong can be reached on 571-272-1834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MF  
May 16, 2006

  
**DON WONG**  
**SUPERVISORY PATENT EXAMINER**